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**SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT ELGIN**

**[2026] SC ELG 70**

ELG-A24-24

**JUDGMENT OF SHERIFF OLGA PASPORTNIKOV**

in the cause

**REBECCA HYMERS**

Pursuer

against

**BLACKHORSE LIMITED, T/A LAND ROVER FINANCIAL SERVICES**

Defender

**Pursuer: McQuade, advocate; Campbell & McCartney Solicitors  
Defender: Tosh, advocate; Eversheds Sutherland (International) LLP**

ELGIN, 30 MARCH 2026

The sheriff, having resumed consideration of the cause, finds the following facts admitted or proved.

1. This action concerns an Automatic Range Rover Sport with registration number [ ] (formerly [ ]) and vehicle identification number [ ] (“the vehicle”).
2. The vehicle was first registered on 11 March 2019.
3. The vehicle passed its MOT test on 21 February 2022 with a mileage of 34,727 miles.

4. The vehicle passed its MOT test on 15 June 2022 with a mileage of 36,574 miles.
5. The vehicle was supplied by the defender to the pursuer on 15 June 2022.
6. The vehicle was supplied under a hire purchase agreement dated 15 June 2022 with agreement number [            ].
7. On 15 June 2022 the pursuer was provided with a letter from Land Rover Financial services enclosing the hire purchase agreement.
8. The price to be paid by the pursuer to the defender in terms of the hire purchase agreement was £71,260.60.
9. The pursuer has paid the sum of £27,591.41 under the hire purchase agreement.
10. The vehicle passed its MOT test on 5 June 2023 with a mileage of 55,089 miles.
11. The vehicle had a mileage of 62,169 miles on 9 July 2024.
12. The vehicle was serviced in accordance with the manufacturer's recommendations at 5 miles on 27 February 2019; 10,212 miles on 12 March 2020; 20,365 miles on 12 February 2021 and; 34,727 miles on 21 February 2022.
13. The vehicle ought to have been serviced on or before February 2023 in accordance with the manufacturer's instructions, but was not.
14. On 28 July 2022, the left rear tyre of the vehicle delaminated.
15. The tyre delamination was not as a result of a manufacturing defect.
16. One of the vehicle's turbo chargers was replaced under warranty in August 2022.
17. The vehicle's engine did not fail.
18. The Diesel Particulate Filter (DPF) requires regeneration or replacement.
19. No payments have been made by the pursuer to the defender in terms of the agreement since April 2024.

20. The pursuer wanted to reject the vehicle, bring her liability to make future instalment payments under the hire purchase agreement to an end, and claim a refund and damages from the defender. To that end, the pursuer consulted Reject My Ltd.

21. Reject My Ltd provided the pursuer with advice in relation to that claim, investigated that claim, and represented the pursuer in relation to that claim. In particular, Reject My Ltd sent correspondence to the defender, initially seeking that they repair the vehicle and then that the pursuer wished to exercise a right to reject the vehicle by letters dated 4 and 18 October 2023 respectively.

### **Finds in fact and law**

1. The vehicle was of satisfactory quality commensurate with its age, price and mileage at the time it was supplied to the pursuer on 15 June 2022.

### **Finds in law**

1. The pursuer does not have the final right to reject the vehicle.
2. The pursuer is not entitled to a refund of any moneys paid.
3. The defender not having materially breached the contract between the pursuer and the defender, and the pursuer accordingly not having sustained any loss or damage as a result, the defender is entitled to be assoilzied.

### **Interlocutor**

**THEREFORE** (1) sustains the fourth and fifth pleas-in-law for the defender, repels the first, second and third pleas-in-law for the defender, finds it unnecessary to determine the sixth, seventh and eighth pleas-in-law for the defender; (2) refuses declarator in terms of the

pursuer's first crave; (3) repels the first, second, third, fourth, fifth, sixth and seventh pleas-in-law for the pursuer; (4) assoilzies the defender from the pursuer's second and third craves of the writ; (5) recalls the interim interdict granted 9 May 2024 and; (6) assigns a hearing on expenses on a date to be fixed hereafter.

## **NOTE**

### **Background facts and circumstances**

[1] The pursuer purchased a vehicle. After experiencing issues with it, she sought advice from Reject My Ltd. Thereafter, she sought to exercise her right to seek repair or replacement as a result of alleged engine failure. She then sought to reject the car on the basis that the defender refused, or at least delayed, to repair the vehicle.

[2] The defender contends that the vehicle was not faulty to the extent which would allow the pursuer to exercise a right of rejection. In any event, even if it had been, any request for repair or rejection had not been validly made.

### **Introduction**

[3] A Note of Objections was lodged by the defender relating to certain passages in the affidavits lodged on behalf of the pursuer and her two witnesses. Given my decision in the case, the issues I considered relevant are addressed in my analysis of the evidence of the witnesses and to that extent the issues raised have been sustained.

[4] The pursuer sought to lodge an insurance document as vouching for loss on the first day of the proof. It was objected to. I sustained the objection on the basis that no fair notice had been given to the defender to enable any enquiry to be made as to the reasonableness of any such loss or whether it could have been mitigated.

### **The proof**

[5] I heard the proof before answer in this action over 4 days. I heard evidence on 14 May 2025, 25 and 26 November 2025. Evidence was heard under reservation given the terms of the Note of Objections. I heard submissions on 4 February 2026.

[6] Oral evidence was heard from four witnesses - three for the pursuer and one for the defender.

[7] Given my decision, I do not propose to rehearse any evidence relating to a right to reject (beyond the issue of the quality of the goods supplied), or the legality (or otherwise) of Reject My Ltd's operations (except insofar as considering the question of credibility and reliability) or the issue of interdict.

[8] Affidavits were lodged for the pursuer and her two witnesses and for the defender from an employee in advance of the proof. The purpose had been for these to constitute evidence-in-chief. Largely, this was the case with witnesses adopting their affidavits and thereafter being subject to cross-examination. Although an affidavit had been lodged for Muir Smith, he was not called to give evidence.

[9] Where there is no record for any averments in relation to affidavit testimony of any of the witnesses, I have disregarded any such testimony.

### **Pursuer's case**

[10] The pursuer gave evidence on her own behalf. She was Rebecca Alice Hymers, aged 31 years. She was a sales manager for a business involved in the production of items for aesthetic practitioners and doctors, as well as post-surgery recovery. She adopted the terms of her affidavit as part of her evidence-in-chief.

[11] In the course of her oral evidence, she was referred to various documentation and photographs. She had purchased the vehicle [ ] which had first been registered on 11 March 2019. At the time of purchase, the vehicle was 3 years old and had done 36,479 miles.

[12] She had bought the vehicle second hand, rather than new, as she had previously bought a new Jaguar F- Pace but felt it had not bedded in that well. Cost had not been a significant consideration. She had purchased additional items such as insurance for tyres and alloys. The alloys were black and she wanted protection for cosmetic reasons in case there was damage caused by her scratching the car's alloys against the kerb.

[13] At the time of purchase, she lived in Edinburgh, but travelled to the Elgin area often to assist her father with administrative work on his farm. She also travelled to Wick to visit family and "the length and breadth of the country" for work. this included travel to Manchester, Birmingham and Pembrokeshire. A trip for horse trial to Ragley Hall had been private.

[14] She had encountered various issues with the vehicle. On 28 July 2022, whilst on the way to Ragley Hall, her left rear tyre delaminated. She had been travelling at 70 miles per hour on the motorway when the delamination occurred. There was also some damage to the vehicle's bodywork. She contacted Land Rover who confirmed that the warranty did not cover the issue of delamination. She replaced the two rear tyres locally at her own expense, having been advised by the garage that it was best to replace two rear tyres.

[15] On 30 July 2022, whilst driving on the M6 northbound, the vehicle lost power and the speed dropped to between 20 and 30 miles per hour. A warning light had ignited shortly prior to this happening. The car was recovered by Land Rover and taken to Pentland Motors in Edinburgh. An issue relating to the turbo was identified and this was

replaced under warranty around 5 August 2022. The price quoted by Land Rover to repair the bodywork was too high and she had repairs done elsewhere in around October 2022.

[16] The DPF filter light had come on in the car. After her initial position that it has first occurred in November 2022, the pursuer accepted that it could have been at an earlier or later date. Thinking the DPF might be full, the pursuer contacted a local garage. She was unable to give any further details about the garage other than it had been a small industrial unit in Edinburgh, not a dealership. She was unable to say how much she had paid, other than the fact that it had been in cash. She could not recall or pinpoint a date when she had gone to the cashpoint and she had no receipts. At the garage she had been told that the DPF had not been full, the message (fault code) had been cleared from the dashboard warning light. This had been done by the garage a couple of times more. A friend of her ex-boyfriend's subsequently also cleared the fault code through a computer to stop the fault code recurring. The pursuer subsequently clarified that the message had been "reset" the first time at the garage in Edinburgh, once by the garage in Wales and on two occasions by her ex-boyfriend's friend.

[17] There were several instances of the car going into limp mode. On one occasion, she accepted that she had taken a photograph of the dashboard while driving in the dark at 24 miles per hour. This qualified her assertion in her affidavit that she was "very careful to drive with due care and attention at all times". The pursuer could not understand the wording of the pleadings that "The vehicle is suffering from an undiagnosed fault within the Diesel Particulate Filter (hereinafter the 'DPF) and Diesel Exhaust Fluid (hereinafter 'DEF')" claiming she had been told by a garage in Wales (no details of the garage, no receipts provided, no date of repair provided) there had been an issue with a pipe not fitting properly causing a soot build up. It had taken a month for the car to be repaired (it had

apparently been parked in a hangar for 3 weeks) and the pursuer thought it was in around August 2023 that she got the car back. She was unsure as to whether written pleadings had been explained to her.

[18] In her evidence that the vehicle engine had now completely failed, and the vehicle would no longer open or start, the pursuer accepted that she had not used her car between September 2023 and February or March 2024. She did not consider that her key had run out of battery because it had not been used, nor did she consider that the car battery may have been flat due to lack of use during that period.

[19] In October 2023, the pursuer had instructed "Reject My Ltd". Her understanding was that they had instructed solicitors on her behalf. She did not recall anyone coming out to inspect the car at that time, but recalled having been asked if someone could do so. She had not seen the document lodged in process showing a picture of her car and a review dated 14 November 2023.

[20] The document had been a report signed by Muir Smith. An issue had been identified as "engine fault" by virtue of an undiagnosed problem within the DPF. There had been no problem at that time with the vehicle starting and the key to the vehicle had been working. The pursuer had been unaware that the report had been produced as part of her claim nor that Mr Smith may be a witness in her case.

[21] Reject My Ltd operated on a no win no fee basis and the pursuer just had to pay for a vehicle inspection fairly early on following her instructing them. It had been £250 but she did not know whether this was for Mr Percy or Mr Smith. From her recollection, if she won the case, she would be liable to pay £2,500. It was a number she vaguely remembered and she did not know whether or not this was inclusive of VAT. She believed that, if her action was unsuccessful, she would not need to pay anything. Her counsel had recently told her,

however, that she “would need to pay the expenses of you guys” (presumably, legal expenses of the defender’s agents and counsel).

[22] In accepting that the service history lodged was accurate, the pursuer stated in her affidavit that she had had the vehicle serviced in March 2023. She had no documentation to support this nor could she recall when or where it had been done beyond the fact that it had probably not been done by “Range Rover”. Accordingly, her statement “I took the car in for services on the 25<sup>th</sup> of March 2023 as per the manufacturer's recommendations” had been erroneous.

[23] The pursuer was shown a precognition she had given dated November 2024 and lodged in process. She did not recall any conversation about it being provided to the bank and thought it had been information gathering. At that time, she stated that she had to get “all her tyres changed”. The pursuer claimed that she had meant the two back tyres. She appreciated the need for accuracy despite that discrepancy.

[24] Her affidavit referred to her keeping “the tyre” and the pursuer said that that referred to the delaminated tyre only. It was put to her that three of the tyres had been manufactured in 2021, before she had purchased the vehicle, and one had been manufactured at the end of June/beginning of July 2022. She remained adamant that two tyres had been replaced in 2022. There was no documentation or any other vouching to support her position.

[25] In re-examination, the pursuer’s position was that there had been no engine failure in 2023, just in 2024.

[26] The Note of Objections had taken issue with the pursuer’s affidavit that there had been no allegation on record for any evidence that the vehicle was dangerous or unsafe. There had been no denial of the defender’s averments that the pursuer did not adequately

maintain the vehicle. The pursuer's evidence that the car had gone into limp mode when she had been driving in the dark and the delamination could raise the implication that she may have been unsafe, but not that the vehicle of itself had been. The fact that the pursuer had not adequately maintained the vehicle had also been evident from the terms of her oral testimony, notwithstanding her contention to the contrary in her affidavit.

[27] From her evidence, it did not appear that the pursuer was aware that the action had been raised on her behalf. She was vague as to the fact that solicitors acted for her and that it was her action. She became quite upset at times when confronted with this information as well as the challenge to her manner of driving.

[28] I accepted that her evidence was credible in the main, but not reliable. She did not give any evidence of assistance to her case. She could only recall dates if she had taken a photograph on her mobile telephone. There had been no effort made prior to the proof to provide any vouching in respect of payments for repairs (information which could have been requested from her bank) and when and to whom these had been made (information which could have been obtained with some effort). She had not had the vehicle serviced at any time. Her admission that, to stop a warning light for the DPF going off she had simply taken it to a garage (which she was unable to give details of) and then to a friend to get it switched off by "connecting it to a computer", rather than asking a Land Rover mechanic to examine the vehicle, was detrimental to her case.

[29] Ian James Ferguson was 55 years old and lived in the Glasgow area. He adopted the terms of his affidavit as part of his evidence-in-chief. He had the managing director of Reject My Ltd who trade as Reject My Car since December 2018.

[30] His evidence centred round the involvement of Reject My Ltd in assisting the pursuer to get compensation and his career history. Much of the evidence in cross-examination challenged the legality of his company in carrying out the activities it did.

[31] Mr Ferguson had left school in 1987. Prior to leaving school, he had washed cars at Weir Toyota dealership. In 1992, he started work in sales at Arnold Clark in Milngavie. He was the general manager until 2013/14. He thereafter recounted his career history at some length. He had never worked as a mechanic but claimed his experience in relation to alloy wheel repair had been “exceptional, wide and varied”. Working in sales, from 1998 on words, he had acquired a broad range of skills and knowledge relating to all parts of the dealership. He had an excellent understanding of mechanical and technical functions of most vehicles as he needed this to deal with complex customer complaints and manufacturer liaisons. He claimed to have an excellent knowledge and understanding of “many of the commonplace defects that affect Jaguar Land Rover vehicles”.

[32] When the pursuer had consulted with his company in August 2023, her complaint about the failure of the turbochargers had been something he had during his time at Lookers Land Rover. Mr Ferguson did not provide any further information as to how often or under what circumstances he had witnessed a “repetitive failure of the turbochargers”.

[33] Mr Ferguson opined that, following procedure, his firm wrote to the defender seeking to reject the vehicle on the basis that it “was not of satisfactory quality, was in an unsafe condition and was not fit for purpose” when the pursuer had purchased it. The basis for that appeared to be a delaminated tyre, ripped and damaged bodywork, turbocharger failure, and the illumination of the DPF light. The assessment of the detail of pursuer’s claim appears to have been made by a case handler, with Mr Ferguson having had oversight. No further information about the assessment process was provided.

[34] Mr Ferguson gave some information about payment arrangements for fees and outlays, none of which is relevant at this time.

[35] The defender's Note of Objections raised the point that there had been no challenge to the contention that the defender was neither barred from challenging the authority of Reject My Ltd to act on behalf of the pursuer nor that it was not carrying on a regulated activity. Additionally, Mr Ferguson was not a skilled witness entitled to give evidence relating to any faults he perceived with the vehicle.

[36] I did not find Mr Ferguson's evidence persuasive and considered that he added very little of value to the pursuer's case. Neither did I consider him to be a skilled witness for the purposes of opining on any fault with the vehicle. I took the view that, at times, he sought to cloud the facts. By way of example, in his affidavit he stated:

"Opinion was sought and obtained in this matter from Forz Khan in England and Wales... I also requested an Opinion from Iain Mitchell KC and Tim Haddow, Advocate, for Scotland"

and alluded to this in evidence. On one view, in that context, it could have been construed that the Scottish position was similar to that in England. In cross-examination it transpired that the fact an opinion had been requested (only a matter of weeks in advance of the proof diet) had just been an assertion and no opinion had, in fact been obtained. It was unclear whether the instruction had even been accepted by either or both counsel. A gap in his career history on LinkedIn was identified (where he had admitted an entry having been dismissed from employment at Lookers Land Rover in 2018), and he acknowledged that he could see where some correspondence (as to whether it is a dealership and trading standards or financial services) could be misconstrued. Mr Ferguson also sought to distance his prior business relationship with Muir Smith, it having been highlighted in previous court cases that he had had too close a connection to provide specialist knowledge. His manner in

giving evidence appeared at times boastful when such an attitude was neither required nor appropriate.

[37] **Mark Andrew Percy** was 55 years old and lived in the Stockport area. He was a self-employed independent engineer. He outlined his various qualifications and memberships of various bodies. He had worked in the automotive industry for between 36 and 38 years. He adopted the terms of his affidavit, as well as a report he had prepared, as part of his evidence-in-chief. He was taken through his report and parts of the reports prepared by the defender's witness Mr Campopiano in response.

[38] Mr Percy started work as a mechanic carrying out vehicle repairs and servicing. He completed an apprenticeship and qualified as a panel beater. He did not complete an apprenticeship as a mechanic. Panel beating is the restoration of damage of bodywork. He had performed that job for 20 years prior to moving into management roles. He had worked for Lookers on two occasions over a 20 year period. He worked in the body shop carrying out all functions, including panel beating. Working for Aviva, part of his remit had been to audit the repair network and review repairers and field engineers. He carried out On Board Diagnostics (OBD) downloads-this consisted of plugging a diagnostic tool into the vehicle and this would download data from the vehicle and detail any issues or faults. As part of the review process, he would address faults after an accident and ensure vehicle was repaired correctly. His area of expertise was gained over a number of years in panel beating.

[39] In relation to his experience of mechanics of a vehicle, his first job had been as a mechanic. He explained that when our vehicle has had an accident, it is not just about bodywork. It can involve lighting systems, wires, radiators, oil coolers and the suspension. If a vehicle had to be repaired, a download of diagnostics had to be carried out before and after the repair. Mr Percy would have carried out maintenance and a predelivery check of

the vehicle following repair. He did not have any documented qualification in that sphere.

He had not carried out any work himself but audited the work of others. In

cross-examination, on a day-to-day basis, it was ascertained that Mr Percy would plug a gadget into a vehicle to see if any fault codes existed.

[40] As head of engineering at an accident management company, he had a role in training and educating staff the best practice in the accident industry. He had been the nominated engineer to Manchester police and a technical consultant to Cheshire police (mainly vehicle inspections due to vehicular collisions). He also has private customers and solicitors' firms (management of repair costs for Winns, solicitors, for example). He thought "Reject My Car" was also a claims management company but more in the line of consumer complaints. He had never heard of "Reject My Ltd."

[41] He had been instructed by Reject My Car and prepared an initial report for them. Subsequently, the matter was transferred to a solicitor and he was instructed by them for the purposes of these court proceedings. The relationship between him and Reject My Car had started around 4 years ago and he had been instructed on about 20 occasions. He was unaware that they operated on a no win no fee basis. He did not operate on that basis and had issued an invoice for his first report which he thought Reject My Car had paid. He prepared two reports but had not charged a fee for the first inspection as he ought to have checked that the vehicle had been fit to be inspected. He had issued a single fee of £750 plus VAT and an additional £1 per mile. He thought he had seen the report by Muir Smith prior to preparing his own, but sought to distance himself from that report stating he preferred to reach his own conclusions. He knew Ian Ferguson and had spoken to him a few times.

[42] He had visited the car twice in March 2025. At the time of his inspection, the vehicle had been inactive for a 2-year period. He had been told this but had not been told that the

battery had been completely discharged. He accepted that he ought to have checked this prior to attending. Mr Percy had not brought “jump leads” on the first occasion so could not perform a diagnostic download or move the car. He did, however, examine the delaminated tyre. He could not recall whether there had been a spare tyre within the vehicle when he had accessed the external power source underneath the spare wheel cover and conceded that reference to a spare tyre in his report had been an error. He did not accept that the way in which he had accessed the power supply could have exposed the car to a risk of damage.

### *Tyre delamination*

[43] He noted that the tread had shredded from the carcass and the tyre had been damaged. In his experience (he had seen a small number of delaminated tyres), he had never seen one like that. Normally, a tyre would shred if there had been damage as a result of the puncture. There was no evidence of a puncture here as there had been no visible deflation of the tyre. That caused him to think that it had been a mechanical issue, rather than an issue with heat. The tyre had not burst. It had delaminated all the way and “there was something odd about it”. There had been nothing wrong with the remaining three tyres on the vehicle and he could not explain why only one tyre had delaminated in that manner.

[44] The delamination had not been caused by overheating as there had been no evidence of charring, blistering or surface melting. If it had overheated, it would have expanded and the driver would have been alerted to a change of pressure. In his view, the faulty tyre had been a manufacturing defect. In his view, tyre delamination was uncommon although he accepted that tyre carcasses could be seen strewn at a layby. Conceding that his experience was limited, he was of the view that there had to be an inherent fault and he suspected a manufacturing defect in that the outer trade had not been attached securely. He thought

that impact damage (a pothole , a large stone) would take a chunk out of the tyre, rather than lead to complete delamination. In accepting that driving at 70 miles an hour a tyre will get hot, becoming softer he did not accept that it would make a tyre more reliable to damage. He had had no reason to believe that the tyres had either been over or under inflated. The tyre had been stored in an unheated garage and he had examined it 2 years after the event, by which time there had been evidence of corrosion. In his view, the pursuer could have lost control of her car and crashed. If it had been the manner of driving that caused the tyre delamination, it would have affected the other tyres. There was no reason to suggest that the car had not been driven in a safe manner. The tyre delamination had not had anything to do with the other issues.

[45] On the second occasion, Mr Percy had connected a battery support device to access the vehicles system. There had been a problem with the key not recognising the vehicle. He explained that all vehicles had a parasitic drain. Electronic systems operated even if not in the vehicle and drew a current from the battery. If the vehicle is not driven, the alternator would not recharge the battery. At a certain point, the only alternative becomes to replace the battery.

### ***Fault codes***

[46] All car electronics talk to each other. They have to store operational parameters. One can then dial in and see if there is a fault. A measurement was taken for each system and a fault was indicated if it fell outside the parameters of the manufacturer. By way of example, if it is not at a particular voltage, a fault would be flagged. He accepted that an issue with the system does not indicate that it is faulty. If the wheel sensor was showing as a

fault, it could be a battery issue. If the system records a fault, anyone looking at it can dial in and see what the car is saying about a particular matter.

[47] He explained the difference between electrical and mechanical systems, by reference to various parts of the body. An electrical component had a current and was a measurement of power, but not a functional thing. A mechanical item is one which spins or turns, such as the turbine or wheels. One is the function, the other the measurement. Either could go wrong and the other would be affected. If the electrical function is not measuring correctly, it will give a false interpretation of what is going on with the car. In considering what would make a fault code permanent, manufacturers building that if fault appears over several cycles, then it can be determined as an actual fault. If it reappears, it will create a fault code. This is not the case in a one-off situation. Ghost codes can appear where the voltage drops. To measure the turbo, it has to be turning. There is no point measuring something that is not functional. If it is running, the alternator provides the current. As there was no problem with the current, the code was as a result of a turbo failure.

[48] He did not accept that the way in which he had supplied power to the vehicle may have resulted in false fault codes, although he had been unable to take a full download. He did not accept, for example, that an active air grille fault had been caused by the way in which he had chosen to start the vehicle. He explained that the vehicle had to be running for the function of some of the systems to be checked. He accepted that some of the fault codes could have been historic-he could not say when they had been recorded, only that they were there. The diagnostic tool that he had used could be bought in Halfords or online and had possibly been less sophisticated than Mr Campopiano's. There was no expertise required to operate the diagnostic reader which he had used and it could simply be plugged in. There was discussion around the reasons why fault codes may appear on the diagnostic

tool. Reasons such as the fact that they had not been cleared following the repair or they could not be cleared for some reason were considered. Ghost codes appeared as a result of a voltage drop. Fault codes could be turned off forever. The witness had been unaware that Mr Campopiano had been able to start the vehicle and carry out a test drive, having taken a diagnostic report before that test drive and that following the test drive, there had been no change.

[49] In cross-examination, he accepted that describing the vehicle as “not running and in an unroadworthy state” in his report had been erroneous. He also accepted that he ought to have brought another battery. The data from the diagnostic report relating to the basis of turbo and emission report had indicated faults. Mr Percy conceded that, more than likely, these had been historical faults which had not been cleared. Having gone through his conclusions relating to each of the fault codes in his report, not having inspected the vehicle, it was put to him that he had simply jumped to conclusions as to their cause and whether or not they had merely been historical. Fault codes would be cleared during a service, but not MOT.

[50] The ignition key has a transponder which the car recognises and the start button sends a message to the motor allowing the engine to start. He had been unable to start the vehicle with the key, but had been unsure as to why that was. It may have been an issue with the key or communication issues between the transponder and the vehicle. He conceded that “diagnosing a car in the middle of a forest is not an easy thing to do.”

### *Turbocharger*

[51] A turbocharger is a device designed to assist with pushing air through the engine. When running, it produces exhaust gases. He described the mechanics of the workings of

the turbo for the engine to work efficiently. If the turbos fail or are otherwise impacted the engine will not run efficiently, if at all. It would go into limp mode restricted to 25 miles per hour and the vehicle would be unusable. He explained the emission control system and that the vehicle had over boost where the fuel/air mixture exceeded the vehicle's requirements. If certain parameters are exceeded, the system sprays AdBlu which binds and reduces the emissions.

[52] The download which Mr Percy took from the system indicated an issue with the turbo, in particular with communication issues (where various components of the vehicle were not communicating with each other) and nitrous oxides exceeding parameters and causing over boost. This resulted in too much here going into the engine causing it to overheat. In turn, that creates more soot and nitrogen oxides. In his view, there was a failure of the turbo as indicated by a fault code. The fault code was there, the turbo could not be repaired properly. Alternatively, the codes had not been cleared.

### ***DPF***

[53] Mr Percy had not tested the soot levels in the DPF as there had not been a fault code. He felt it reasonable to assume that, as had not been a fault code, the DPF had not been blocked or full. Between 0g to 6g of soot there would be no fault code. 12g to 20g of soot would be a high amount and there would be a force to clean. He did not agree that over 20g of soot would require the DPF to be cleared or replaced. If a warning light came on, the vehicle could be taken to a garage to have it reset whether or not the physical condition merited it. He had been unaware that it had been reset three or four times without having the DPF cleared. He did not believe the DPF had been full given the pressure levels. Various anomalies in Mr Percy's figures were challenged, the distance the vehicle had been

driven by the pursuer which appeared to be in metres, rather than miles, in part. Mr Percy conceded that either the data in his report had been wildly inaccurate or in an unusual format. Percy concluded that vehicle could still be driven with 23g of soot, but he would not advise a consumer to do that. He accepted that the car would go into limp mode to protect the vehicle if there was too much soot in the DPF.

[54] Mr Percy explained his understanding of how the DPF cleans itself. He could not find a fault code. In response to the fact that Mr Campopiano had found a fault and that it had tried and failed to clean itself 220 times, he said there had to be a reason for the failure. It could suggest a fault in the vehicle. He accepted that oil had been diluted by fuel as a result of improper DPF regeneration and that an accumulated distance of 13,500 miles driven by the pursuer since the last oil change fell slightly outside the servicing schedule. Driving style would impact on this issue.

[55] The Note of Objections opined that Mr Percy had not been skilled to offer any opinion other than in relation to bodywork. Additionally that there had been nothing on record that the vehicle had been dangerous or unsafe.

[56] Whilst credible to a certain extent, I did not consider him to be reliable. On very fine balance, however, I did consider him to be a man of skill. Although I considered that in respect of all technical matters he had not been as skilled as Mr Campopiano, I considered that his evidence was of assistance to the court, he did have the necessary knowledge and experience with the appropriate body of experience to underpin that and had been impartial. I did have some concerns. By way of example, travelling to examine a car he had been told had been off the road, he had not brought the basic equipment to start the car or a spare battery. I put this down to oversight. His equipment for determining fault codes was not as sophisticated as that of Mr Campopiano. By his own admission, it was something the

equipment he used could be bought by any member of the public. That of itself did not render his evidence as unskilled – one still had to understand fault codes and have the ability to interpret them. He had not managed to power up the vehicle. He made a number of concessions in his evidence. He was not furnished with information I considered critical, such as the fact that the pursuer had had the DPF warning light switched off on a number of occasions without any other action being taken. I did find his evidence to be useful to the extent of how the mechanics of a car operate, and considered that these went beyond what would count as simply a good knowledge. Where his evidence differed from that of Mr Campopiano, I preferred the evidence of Mr Campopiano.

#### **Defender's case**

[57] **Michael Campopiano** was 54 years old and the forensic examiner for his company, Elite Inspection. He had been in the motor industry from the age of 17, starting in 1987 as an apprentice, completing the apprenticeship in 1991. He had worked for Arnold Clark from that time until leaving in 2017. He detailed his qualifications and experience. Because of time served in the mechanical aspect of vehicles, he wished to further his career and undertook further training and enhancements and dynamics as well as car management. I considered it of particular relevance that he had completed a course with Michelin relating to tyre wear and damage diagnosis. He received certification as an automotive engineer in 1998. He now had fellow status of the motor industry which required a certain level of expertise and advanced training. He started up his own company in 2022 and now carries out vehicle inspections for both pursuer and defender, as well as advising clients who wish to buy a car.

[58] He had prepared two report and adopted their contents in full as part of his evidence-in-chief. On 9 July 2024 he'd been instructed to prepare a report. He had powered up the vehicle noting that all electrical components had been fine and functioning. He could not recall having been advised that the battery was flat, but had come prepared as it is his practice to take a battery with him and considering the distance. There had been no warning lights illuminated on the dashboard, which might have been expected had there been any type of fault. He had carried out a road test consisting of a quick drive around the estate given that the fuel level was low and the location remote. The vehicle had behaved as expected. He had driven for around 5 or 10 minutes. He had brought specialist equipment and was unaware whether the pursuer would be in a position to "jumpstart" the car or replace the battery. Had the battery been replaced, the car would have performed as it should notwithstanding the fault codes.

### *Tyre delamination*

[59] He explained that tyre delamination was a failure of the trade which is attached to the tyre. It can be a fairly common occurrence and one sees a lot of tyre carcasses on the hard shoulder of motorways in England. Different things can cause delamination such as impact of the foreign object, overheating or under inflation. Road conditions are generally quite poor and the most common cause is vehicle hitting debris or potholes. He had not examined the tyre itself but had seen photographs. Delamination could have occurred as a result of contact or impact with an object when driving and could be associated with wear and tear. The vehicle may have hit a curb earlier with subsequent vibration causing the delamination or it could have occurred suddenly. He agreed with Mr Percy that there was no evidence of overheating. Crucially, however, he disagreed that delamination occurred as

a result of a manufacturing defect. Had that been the case, one would have expected delamination to have occurred earlier in the tyre's lifespan. There would have been shuddering of the vehicle and handling problems if the tread had been coming off. As there had been no history of the vehicle shuddering, that is inconsistent with the manufacturing defect and suggests delamination occurred as a result of impact.

[60] He would not have expected a tyre pressure indicator to have come on unless the pressure had been too low. It is not always the case that a front tyre would hit a pothole first as back tyres do not always follow front tyres and vice versa.

### *Fault codes*

[61] In categorising fault codes, "historic" means something occurred in the past. It will then become "permanent" and then dropped to historic once again. Suggesting that the turbo had not been properly repaired as the fault code had not been removed is incorrect. It just meant that the code could stay in history until raised. The faults were not present when he had driven the vehicle. They may appear if the DPF is blocked.

[62] He had taken the codes before the test drive, rechecking them after driving. The fault codes were the same. He explained that fault codes could occur if the battery had been depleted and without any dashboard illumination. There two historic and permanent codes available. The permanent codes were related to cooling fan vents, the vents on the front radiators and were diagnostic codes.

[63] A historical code does not necessarily mean that something has been repaired, just that it had been raised. It indicates only that the system is not detecting a fault at that particular period otherwise it would come up as a permanent fault. Historic codes are

generally discussed with the customer during the purchase process. Some are interested, others not.

### *Turbo charger*

[64] Mr Campopiano had been aware that the first turbocharger had been replaced, but not the reason for this. However, he was of the view that it was more likely than not that the turbocharger was functioning correctly at the point of sale as the vehicle could not have covered 3176 miles over 22 days with a faulty or defective turbocharger. It was unknown whether the second Turbo failure had been as a result of faulty workmanship or whether it had been the same Turbo charger that had been replaced. The turbocharger is not a lifetime part. Due to operational needs and high operating temperatures and tolerances, it will fail at some point in time. When it does fail, this can be sudden and without warning. It is not a latent fault and the lifespan depends on the way the vehicles being driven and, more importantly, the way the vehicle is being maintained. There had been no issue with the turbocharger when he had driven the vehicle. If driven properly and maintained, he would expect it to last between 50,000 and 100,000 miles. If the vehicle is not warmed up before being driven, this could cause premature wear.

[65] If a blockage occurs in the DPF, the exhaust would put pressure on the boost. The sensors could be clogged and there would be contamination. When the ignition is turned on, Turbos have valves which activate fully and retract. If there is a discharged battery, that indicates a fault in the vehicle would not start. If partially blocked, the vehicle will try to do a regeneration. This would have an effect on the turbo charger causing it not to function correctly. There would be an increase in pressure as gas could not escape as the turbo is spun by exhaust gases with the compressor pushing air through the engine.

***DPF***

[66] A Diesel Particulate Filter (DPF) is a filter which captures and stores exhaust soot in order to reduce harmful emissions from diesel vehicles. As they only have a finite capacity, trapped soot has to be emptied or burned off periodically by regeneration of the DPF. The volume of soot is determined by driving styles and no two vehicles will ever experience the same volume of soot contamination. Vehicle management systems monitor and conduct DPF regeneration when required.

[67] There were no faults noted with the DPF at the time of inspection. There was no illumination of the engine warning light during inspection. Mr Campopiano was of the view that there was 22.6g of soot in the DPF, a high amount which could only be reduced by regeneration. In his view, this had been caused by a failure to maintain the vehicle correctly and neglect. If the vehicle has not been driven correctly, it does not allow for self-regeneration to occur. That is not a fault with the vehicle, it is something which requires the driver to adopt a different driving habit. If that is not done, forced regeneration has to be carried out by the dealer network. The vehicle regenerates of its own accord during driving.

[68] In response to the pursuers evidence that the DPF warning light has come on in the vehicle, she had taken it to a garage, they turned the light off and she had driven off without any further action being taken on three or four occasions, Mr Campopiano opined that that may have an impact on the operation of the DPF which would need to be investigated. Erasing fault codes is dangerous and one should not just to raise a code without investigating the cause. Deleting the code means the information is lost. If the DPF is blocked, to save the engine and the vehicle, the car will go into limp mode. If the vehicle is

driven while the DPF is partially blocked, there will be oil dilution which would affect a vehicle's ability to lubricate the system. On examination, the vehicle had been showing signs of oil dilution consistent with it having been driven when the DPF had been at least partially blocked.

[69] The DPF had requested 683 regeneration. 463 had been successful, meaning 223 regenerations had not taken place. This could have been down to a variety of reasons. If the engine management light is on, regeneration would not be performed. A prime example is if there is  $\frac{1}{4}$  of a tank of fuel or less, it will not regenerate. The average vehicle would demand regeneration every 200 or 300 miles. It may be that a sensor was not functioning because it had been contaminated with soot. Continuous driving would cause a regeneration. Driving a lot in town means the vehicle would make more frequent attempts at regeneration.

[70] The fact that the vehicle's engine had been replaced prior to delivery does not indicate that something serious must have happened to the original engine. He did not know why it had been replaced but sometimes it is the most economical repair for the manufacturer.

[71] I considered this witness to be credible and reliable and skilled in the areas about which he gave his evidence. I preferred his evidence where it differed from the evidence of Mr Percy. The difference in the presentation of this his evidence was in marked contrast to the evidence elicited from Mr Percy. Mr Campopiano's evidence was led in a more structured way. Neither did Mr Campopiano make any concessions in relation to the opinions expressed in his reports, nor did he require to make any corrections.

[72] An affidavit had been provided by Stephen Williams, specialist complaint manager employed by Blackhorse Finance Limited, the defender. He had the responsibility of

assessing disputes relating to satisfactory quality and reviewing complex cases. The defender provides finance for new and used vehicles. They purchase the vehicle on behalf of a customer and own the vehicle for the duration of the agreement with the customer who pays in accordance with a finance agreement. Once all payments had been made, the customer would only vehicle.

[73] The pursuer entered into an agreement number [ ] when she had lived at [ ]. The goods supplied were used Land Rover range Rover sport diesel estate 30Sdv6 HSE Dyna motor vehicle registration number [ ] and VIN [ ]. The registration number was subsequently changed to [ ]. The recorded mileage at the time of the agreement was 36,479. The purchase price was £58,969. The pursuer paid a deposit of £13,296 and the amount of credit provided was £45,673. Hire purchase charges were £12,291.60, made up of interest charges together with a £10 option to purchase fee with the final payment. The agreement was signed on 15 June 2022 by the pursuer.

[74] The pursuer stopped making payments in April 2024 and Mr Williams was aware of the interim interdict in relation to payments after 9 May 2024.

[75] The evidence was not in dispute and indeed had been agreed as part of the joint minute between parties.

### **Submissions**

[76] I was helpfully provided with written submissions by each side and I am grateful to them for this. Each had access to the other's submissions. Each adopted their written submissions and I was further addressed by each side in oral submissions. Copies of all submissions are in process and I will not rehearse the terms of them at length.

[77] Submissions were, at times, repetitive and I have focussed on those I considered relevant. Further, I have not considered any submissions relating to what constitutes a right to reject, given my decision that there was no entitlement to reject in this case.

[78] Parties had each lodged various lists of authorities. They referred to these, applying or distinguishing them as they considered appropriate. I have referred to those authorities in my consideration of the law *infra*.

### ***Pursuer***

[79] I was invited to grant decree of declarator in terms of the six heads of claim as first craved, payment of £27,591.41 as second craved and £3,000 as third craved with the expenses of the action as sixth craved.

[80] In terms of the Consumer Rights Act 2015 (“the Act”), the goods supplied had to be of a satisfactory quality. The vehicle was neither fit for purpose nor durable and did not meet the standard a reasonable person would have considered satisfactory in all the relevant circumstances. The Act represented a sea-change in consumer rights from a “*caveat emptor* ideology” to provisions “intended to protect consumers from being ripped off.”

[81] As an expensive prestige vehicle of less than 3 years of age and which had a lower than average mileage, and as it had been sold as part of a hire purchase contract, there was a reasonable expectation that it ought to have been sufficiently durable to have subsisted for longer than around 6 weeks without fault. The vehicle had latent defects which had appeared within the first 6 months of a 49 month contract. This was not such an old second-hand vehicle that there was a risk of repairs being required, and so *Thain v Anniesland Trade Centre* 1997 SLT (Sh Ct) 102 could be distinguished. In terms of section 19(14) of the Act,

therefore, the vehicle should be taken as not having conformed to the contract as at the date of delivery to the pursuer.

[82] The defender's submission that the vehicle's engine had not failed ought to be rejected. The vehicle had had to be manually restarted and had only been taken for a short drive to test it. Nor was it correct that the only issue had been engine failure.

[83] The turbo charger was either inadequately repaired or the underlying fault had not been identified or corrected. The fault had been mechanical in nature and occurred just over a month after the pursuer had taken possession of the vehicle.

[84] I was invited to prefer the evidence of Mr Percy to that of Mr Campopiano in relation to the fault codes and the reason for the DPF failing to regenerate. If the turbo charger issues had been resolved, there would have been no reason for the DPF fault code to recur. The DFP had been blocked, causing the vehicle to go into limp mode. Even with poor driving, the 230 times to regenerate in the fault codes was an excessive number. The repeated problem caused the vehicle to be unfit for purpose. That could not be taken alone. Missing a car service would not correspond with the faults. There had been a new engine put into the vehicle prior to the pursuer taking possession of it. The turbo charger had been changed under warranty. The next issue was that of the tyre delamination. Given Mr Percy's evidence, this had been due to a manufacturing defect and not the manner of driving.

[85] Mr Percy ought to be seen as suitable to give skilled evidence in a case of this nature. Even in the event that he had less expertise than Mr Campopiano, this of itself did not deem him unsuitable to give expert evidence. His impartiality ought not to be questioned, either.

[86] An award for loss and inconvenience ought to be made, albeit the pursuer was unable to substantiate the costs she incurred.

[87] Submissions were made relating to the right to reject and the involvement of Reject My Ltd. Given my decision, it is not necessary for these to be rehearsed or considered.

[88] The submission that the vehicle had not been “overall of satisfactory quality” went further than the pleadings, although I have given this proposition consideration nevertheless.

### *Defender*

[89] I was invited to find that the vehicle was of satisfactory quality in terms of the Act, the pursuer did not a final right to reject, was not entitled to a refund nor had she sustained any loss or damage resulting from a breach of contract by the defender.

[90] Objections were taken to parts of the affidavits produced, I was invited to sustain these and I have dealt with this issue elsewhere in this judgment.

[91] In matters of credibility and reliability, I was directed to aspects of the pursuer’s evidence which should give pause for thought. As well as having to make a number of important corrections to her affidavit, the pursuer had been unable to say how she could have been specific about certain dates, accepting that she did not know. There had been no record or vouching which could have assisted.

[92] In considering whether the vehicle had been satisfactory, regard had to be had to its age and price. The issue of durability was, therefore, not necessarily of a quality a reasonable person would expect and it ought to be anticipated that some defects might come to the surface sooner or later, with reference to *Richard v Park’s of Hamilton (Townhead Garage) Ltd*, unreported, Hamilton Sheriff Court, 10 January 2012. The fact that goods may break down during a short period after delivery, although may be evidence of a lack of quality, rather than of a breach of contract. If that were the case, all goods would come with a

warranty extending for an unspecified time into the future, rather than at the time of supply. That is why goods are supplied with contractual warranties – defects can occur a short time after delivery which have nothing to do with the quality of the goods at the time of delivery. Durability did not mean “duration”. Per *Douglas v Glenvarigill Co Ltd* 2010 SLT 634, where a defect is relied upon to suggest that goods were not of satisfactory quality, it must have existed at the time of delivery. The fact that a new engine had been fitted in the vehicle prior to purchase may have heightened expectations as to its quality. The pursuer’s contention linking the durability of a vehicle with the duration of a finance agreement was illogical and ought not to be accepted. That would be akin to the 2015 Act providing a guarantee, which is not the case. Nor was it the case that the concept of “satisfactory quality” had changed materially. The Act had been a consolidating Act drawing the supply of goods and services and unfair contract terms into one Act.

[93] Criticism was levelled at the interpretation of section 19(14) of the Act in the pursuer’s submissions. That interpretation applied only to the right to reject, not to a claim for damages which proceeds at common law, as per section 19(11). Any fault would have had to have rendered the goods disconform to contract at some time during the first 6 months and only then would the presumption apply. Per section 19(15), however, section 19(14) does not apply if it is established that the goods did conform to contract on the date of delivery or its application is incompatible with the nature of the goods or with how they fail to conform to the contract.

[94] In considering the issues on the basis of which the pursuer seeks to reject the car and which arose following delivery, namely the turbo charger, tyre delamination and associated body damage, the DPF, fault codes and engine failure. In short, at the point of sale, there had been no problem with any of these. Any assumed fault with the turbo following a

successful repair had been on the basis of a historic fault code. The tyre delamination was likely caused by contact, impact or wear and tear, on Mr Campopiano's evidence. Both the tyre and associated bodywork damage were replaced and repaired by the pursuer. The only thing wrong with the DPL is that it is full and requires regeneration. There is nothing unusual about needing to replace a filter from time to time if that is required. As far as the fault codes on which the pursuer sought to rely were concerned, these were mainly historic and had been erroneously identified (but not interrogated) by Mr Percy. There had been no engine failure as the vehicle had been driven by Mr Campopiano.

[95] It was very significant that Mr Percy was not a qualified mechanic. As a qualified panel beater, he did not have the relevant experience to offer expert opinion on what applied in this case. His lack of expertise had been evident in certain parts of his evidence, including making observations about brakes and steering without having driven the vehicle. Various other shortcomings in his evidence were drawn to my attention as well as the fact that Mr Percy had not been provided with important information relating to the DPF light. I was invited to prefer the evidence of Mr Campopiano where it differed from that of Mr Percy.

[96] Submissions were made in relation to rejection and that, in all circumstances not only was the pursuer not entitled to reject the car, but rejection had been only on the basis of engine failure. In any event, the claim had been made on her behalf illegally by Reject My Ltd, a company which ought to have been (but was not) authorised in terms of the Financial Services and Markets Act 2000. Given my decision in the matter, it has not been necessary to consider these. I was invited to attach no weight to the evidence given by Mr Feguson on behalf of the pursuer.

[97] Similarly, I did not consider any submissions relating to the financial aspects and what the pursuer may and may not be entitled to claim for loss or damages in the event of success.

## **The law**

[98] This is a summary of the authorities cited by parties I have had regard to.

### ***Statute***

Consumer Rights Act 2015 (the Act)

### **“Section 2 Key definitions**

- (1) These definitions apply in this Part (as well as the definitions in section 59).
- (2) ‘*Trader*’ means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf.
- (3) ‘*Consumer*’ means an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession.
- (4) A trader claiming that an individual was not acting for purposes wholly or mainly outside the individual's trade, business, craft or profession must prove it.
- (5) For the purposes of Chapter 2, except to the extent mentioned in subsection (6), a person is not a consumer in relation to a sales contract if —
  - (a) the goods are second hand goods sold at public auction, and
  - (b) individuals have the opportunity of attending the sale in person.
- (6) A person is a consumer in relation to such a contract for the purposes of —
  - (a) sections 11(4) and (5), 12, 28 and 29, and
  - (b) the other provisions of Chapter 2 as they apply in relation to those sections.
- (7) ‘*Business*’ includes the activities of any government department or local or public authority.
- (8) ‘*Goods*’ means any tangible moveable items, but that includes water, gas and electricity if and only if they are put up for supply in a limited volume or set quantity.
- (9) ‘*Digital content*’ means data which are produced and supplied in digital form.”

**“Section 9 - Goods to be of satisfactory quality**

- (1) very contract to supply goods is to be treated as including a term that the quality of the goods is satisfactory.
- (2) The quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory, taking account of—
  - (a) any description of the goods,
  - (b) the price or other consideration for the goods (if relevant), and
  - (c) all the other relevant circumstances (see subsection (5)).
- (3) The quality of goods includes their state and condition; and the following aspects (among others) are in appropriate cases aspects of the quality of goods—
  - (a) fitness for all the purposes for which goods of that kind are usually supplied;
  - (b) appearance and finish;
  - (c) freedom from minor defects;
  - (d) safety;
  - (e) durability.”

**“19 Consumer's rights to enforce terms about goods**

- (1) In this section and sections 22 to 24 references to goods conforming to a contract are references to—
  - (a) the goods conforming to the terms described in sections 9, 10, 11, 13 and 14,
  - (b) the goods not failing to conform to the contract under section 15 or 16, and
  - (c) the goods conforming to requirements that are stated in the contract.
- (2) But, for the purposes of this section and sections 22 to 24, a failure to conform as mentioned in subsection (1)(a) to (c) is not a failure to conform to the contract if it has its origin in materials supplied by the consumer.
- (3) If the goods do not conform to the contract because of a breach of any of the terms described in sections 9, 10, 11, 13 and 14, or if they do not conform to the contract under section 16, the consumer's rights (and the provisions about them and when they are available) are—
  - (a) the short-term right to reject (sections 20 and 22);
  - (b) the right to repair or replacement (section 23); and
  - (c) the right to a price reduction or the final right to reject (sections 20 and 24).
- (4) If the goods do not conform to the contract under section 15 or because of a breach of requirements that are stated in the contract, the consumer's rights (and the provisions about them and when they are available) are—
  - (a) the right to repair or replacement (section 23); and
  - (b) the right to a price reduction or the final right to reject (sections 20 and 24).

- (5) If the trader is in breach of a term that section 12 requires to be treated as included in the contract, the consumer has the right to recover from the trader the amount of any costs incurred by the consumer as a result of the breach, up to the amount of the price paid or the value of other consideration given for the goods.
- (6) If the trader is in breach of the term that section 17(1) (right to supply etc) requires to be treated as included in the contract, the consumer has a right to reject (see section 20 for provisions about that right and when it is available).
- (7) Subsections (3) to (6) are subject to section 25 and subsections (3)(a) and (6) are subject to section 26.
- (8) Section 28 makes provision about remedies for breach of a term about the time for delivery of goods.
- (9) This Chapter does not prevent the consumer seeking other remedies—
  - (a) for a breach of a term that this Chapter requires to be treated as included in the contract,
  - (b) on the grounds that, under section 15 or 16, goods do not conform to the contract, or
  - (c) for a breach of a requirement stated in the contract.
- (10) Those other remedies may be ones—
  - (a) in addition to a remedy referred to in subsections (3) to (6) (but not so as to recover twice for the same loss), or
  - (b) instead of such a remedy, or
  - (c) where no such remedy is provided for.
- (11) Those other remedies include any of the following that is open to the consumer in the circumstances—
  - (a) claiming damages;
  - (b) seeking specific performance;
  - (c) seeking an order for specific implement;
  - (d) relying on the breach against a claim by the trader for the price;
  - (e) for breach of an express term, exercising a right to treat the contract as at an end.
- (12) It is not open to the consumer to treat the contract as at an end for breach of a term that this Chapter requires to be treated as included in the contract, or on the grounds that, under section 15 or 16, goods do not conform to the contract, except as provided by subsections (3), (4) and (6).
- (13) In this Part, treating a contract as at an end means treating it as repudiated.
- (14) For the purposes of subsections (3)(b) and (c) and (4), goods which do not conform to the contract at any time within the period of six months beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day.
- (15) Subsection (14) does not apply if—
  - (a) it is established that the goods did conform to the contract on that day, or
  - (b) its application is incompatible with the nature of the goods or with how they fail to conform to the contract.”

## Textbook

Ervine, *Consumer Law in Scotland* (5<sup>th</sup> Edition, 2015) paragraph 4-33:

“It is important to realise that this term (‘durable’) is to be satisfied at the time of delivery and not at some later date. Later events may be relevant in determining whether, at the time of sale, the goods were durable. The criterion is durability not duration. The law commissions rejected any suggestion that normal lifespan for classes of goods should in some way be required. They emphasised, and this is reflected in the new definition, that durability is to be a flexible concept requiring that goods should last a reasonable time taking into account whether they have been well or badly treated.”

*Benjamin’s Sale of Goods* (12<sup>th</sup> Edition, 2024) – paragraph 11-035:

“durability is an aspect of quality: goods are not of satisfactory quality unless they are capable of enduring for a period reasonable in the circumstances, and the fact that they seriously deteriorate or (for example) breakdown during such a period as evidence that they were not of satisfactory quality rather than a breach of itself. This can be an important point in many consumer disputes, and hence a specific reference to durability was included in the guidelines. Most goods will be subject to wear and tear over a period of use, but the degree and rate of this will reasonably be expected to vary widely across different components and this must be taken into account when assessing whether the durability of the goods is acceptable. Despite the specific reference to durability, in many cases it will be difficult to prove that the lack of durability resulted from a defect in the goods themselves rather than from the way in which they were transported, treated, used and maintained. Furthermore, specific provision as to durability such as this would ideally require a right to reject which persists for a longer time than the law normally allows, for in the case of goods which may be expected to last for a long period, any lack of durability could take some time to manifest itself. Such an extended right to reject was indeed urged in the consumer interest, but was not taken up in the modifications to the act.”

## Case law

*Kennedy v Cordia (Services) LLP* 2016 SC (UKSC) 59 – definition of a “skilled witness”

*Thain v Anniesland Trade Centre* 1997 SLT (Sh Ct) 102 - a fault developed in a

second-hand car around 2 weeks after it had been purchased, rendering the car

unusable. In considering the car's fitness for its purpose at the time of purchase, and

the car proven reasonably fit during the initial period of use after acquisition

provided a justifiable basis for the conclusion that the defect was not present when the car was sold. The fact that in the instant case the car had proven reasonably fit for purpose during the initial period of use acquisition, is relevant. The conclusion can be drawn that vehicle had been fit for purpose as at the date of delivery. At page 106 G, H and I:

“cars vary in the length of trouble free use they provide, even within the same marque and model, but the ‘reasonable person’ accepts that the risk of failure and the need for expensive repair increases with the increasing age and use of a car. People who are sufficiently well off financially to do so usually replace their cars before they reach that the age and mileage that involves them in that risk. People who buy second-hand cars get them at less than the original price in large part because second-hand cars have attached to them increased risk of expensive repairs.”

*Richard v Park’s of Hamilton (Townhead Garage) Ltd*, unreported, Hamilton Sheriff Court, 10 January 2012

*Douglas v Glenvarigill Co Ltd* 2010 SLT 634 – The quality of goods is assessed at the time of delivery so where a defect is relied upon to suggest that goods were not of satisfactory quality, it must have existed at the time of delivery. At page 639-40 paras [19] –

“Breach of contract - in asserting that the defenders are in breach of contract, the pursuer relies primarily upon section 14 of the Sale of Goods Act 1979. That section states the familiar implied term that goods supplied under a contract of sale will be of satisfactory quality, and goes on to state the goods will be of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking into account a number of specified factors. In the present case the factors that are particularly relied on by the pursuer are safety and durability. For the defenders it was submitted that further to be a breach of implied terms in section 14, the fault must have existed at the time of delivery”

And [20] – “it is not in doubt that, for a breach of section 14 to exist, the defect must have existed at the time when the goods were delivered”

**Analysis and decision**

[99] The first issue in its narrowest form is this - was the pursuer entitled to reject the vehicle? Simply put, the answer is no. The pursuer has failed to establish that, at the time of delivery, the vehicle was not of a satisfactory quality.

[100] In terms of the pleadings, as at the time of delivery, the assertion is that the vehicle had not been durable or fit for purpose; the vehicle had suffered engine failure (which had been due to an undiagnosed fault in the DPF and DEF) within the first 6 months following delivery. Additionally, the vehicle's turbo units failed on two occasions, it had poorly repaired body damage and suffered a delaminated wheel (*sic*), now understood to be a tyre delamination. I did not find the assertions in those pleadings to have been established.

[101] The turbo had been replaced under warranty. The fact that a warranty exists suggests that replacement may be required, not that there is an inherent fault. Following replacement, the turbo failed for a second time. It may have been due to an error in fitting the unit. This was not a fault which could be said to have been in existence at the time of delivery. Delamination of the tyre had caused issues with the bodywork – again, not a fault in existence at the time of delivery. The tyre delamination had not been as a result of a manufacturing error. Of itself, it would not have rendered the vehicle of unsatisfactory quality regarding durability in any event. Only the issue of engine failure has been alleged and the reason for this.

[102] The pleadings do not clearly state that the vehicle ought to be rejected as a result of the combination of alleged faults, but I have nevertheless considered this given the evidence led, as well as whether there had been engine failure – the reason why rejection was sought in the first place.

[103] In considering whether the vehicle was of a satisfactory quality at the time the pursuer took possession of the vehicle, I have had regard, firstly, to the pursuer's own evidence of the things she considered wrong with the vehicle. She herself did not consider that there had been "engine failure" until 2024. She thought that her right to reject the car was on the basis of the delaminated tyre and the DPF issues causing the vehicle to go into limp mode. Of course, she was no expert and so I further considered whether the evidence of Mr Percy supported her case. In deciding that it did not, I had regard to the fact that he had essentially retracted his views relating to the fault codes, accepting that they may have been historic and, accordingly, there had been no fault with the turbo. Had he interrogated the codes following a full charge of the battery, this may have become apparent to him. Additionally, he had been unaware of the fact that the DPF warning light had been turned off. Had he been aware of that, he may have come to a different conclusion relating to the DPF and DEF findings.

[104] I had no hesitation in accepting the evidence of Mr Campopiano that there was no issue with the car (beyond the fact that the battery was flat in the vehicle and key fob, and that the DPF needed cleared) and that it functioned as it ought to on his examination. The vehicle would not have been able to cover 3,176 miles with a faulty turbo charger.

A warranty exists in recognition that there a fault may occur. That was known by the pursuer and the turbo was repaired under that warranty. That cannot be a valid reason for rejection.

[105] Likewise, had the tyre been faulty as at the stage of manufacture, the vehicle would not have covered such a distance and it would have been likely that the other three tyres would also have been damaged. I considered this to be the case on a balance of probabilities given the dates on manufacture of the remaining tyres, given my view that the pursuer had

only had one tyre replaced notwithstanding her evidence. Any damage to the bodywork had been as a result of the tyre delamination.

[106] The fact that any ongoing issues arising with the vehicle in relation to the DPF filter could have been as a result of “repairs” done on it (not by Land Rover) cannot be ruled out. It is not known what works had been carried out in Pembrokeshire, in the unknown garage in Edinburgh, or by the pursuer’s former partner’s friend and whether these had caused any damage.

[107] I did not consider that these issues either individually or in combination rendered the vehicle faulty to the extent required by law. “Satisfactory” does not mean “perfect”, but does mean free from minor defects. I do not consider that there were any defects, minor or otherwise, as at the time of purchase.

[108] Notwithstanding the fact that this was a “prestige” vehicle, it was nevertheless a second-hand vehicle. The pursuer had been able to cover a significant number of miles in it. The vehicle was 3 years old at the time of purchase, had had the engine replaced and had done 36,574 miles, all factors I have taken into account. A year after purchase, the vehicle had been driven for a further 18,515 miles. Given the pursuer’s testimony that she had not driven the vehicle after September 2023, the vehicle must have been driven for a further 7,080 miles between June and September 2023. Accordingly, the vehicle was capable of being driven for significant distances as explained by the pursuer without issue. There were only a few occasions between June 2022 and September 2023 when the vehicle could not be driven at all. The most significant length of time the vehicle was off the road appears to have been when it was in an unnamed garage in Pembrokeshire.

[109] In short, had the vehicle been driven in an appropriate manner to allow the DPF to clear, had the issue of the DPF clearing been addressed by the pursuer, rather than just

having the warning light turned off, had the pursuer had the car serviced so that this issue could have been addressed, it is unlikely that the vehicle would have gone into limp mode. The issue with the turbo had been covered by warranty and did not render the vehicle unsatisfactory – even a new vehicle could have encountered this issue. The tyre delamination was just “one of those things” and likely as a result of debris or a pothole on the motorway.

[110] Whether the vehicle has been wilfully rejected, becomes redundant for the purposes of this case and there is no need to consider it further.

[111] Since April 2024, the pursuer has made no payments on the car. As she was not entitled to reject the vehicle, the interdict will be recalled and the payments should resume.

[112] I will fix a hearing on expenses. However, should parties come to an agreement in relation to expenses, I would ask that they notify the court in advance of the hearing.